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Review of progress in the implementation of the right to development, including consideration, revision and refinement of the right to development criteria and operational sub-criteria

Draft framework to improve the effectiveness and efficiency of the Working Group on the Right to Development with a view to accomplishing its mandate

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Summary

In the present report, the Chairperson-Rapporteur of the Working Group on the Right to Development develops a draft framework for improving the effectiveness and efficiency of the Working Group with a view to accomplishing its mandate.

In the first part, the Chairperson-Rapporteur briefly reviews the past work of the Working Group, drawing on its agreed conclusions and recommendations, assessing the extent to which the Working Group has addressed all aspects of its mandate and assessing the factors and conditions that have influenced its effectiveness and efficiency.

The Chairperson-Rapporteur identifies three periods into which the past processes of the Working Group can be divided: a first period characterized by its interaction with the Independent Expert on the right to development; a second marked by its interaction with the high-level task force on the implementation of the right to development; and a third intergovernmental process that continues to date, focused on the revision and refinement of criteria and corresponding operational sub-criteria for the implementation of the right to development.

In the second part, the Chairperson-Rapporteur draws on lessons learned and formulates a draft framework, in accordance with the mandate. She observes an imbalance in the manner in which the tasks entrusted to the Working Group by the Commission on Human Rights in its resolution 1998/72 have been implemented, with some aspects trailing behind others. She highlights three main factors that need to be addressed to improve the

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effectiveness and efficiency of the Working Group: political will and commitment; an effective agenda; and the availability of means commensurate with the tasks entrusted to the Working Group, including mechanisms, modalities, time, and human and material resources. She makes several recommendations, primarily procedural, to address these factors with a view to accomplishing all aspects of the Working Group's mandate.

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I. Introduction

1. In its resolution 27/2, the Human Rights Council, at the recommendation of the open-ended Working Group on the Right to Development, requested the Chairperson-Rapporteur of the Working Group to further her efforts to improve the effectiveness and efficiency of the Working Group with a view to accomplishing its mandate, including through drafting a framework for consideration at the sixteenth session of the Working Group, in consultation with regional and political groups.

2. In a letter dated 29 October 2014, the Chairperson-Rapporteur invited, in accordance with subparagraph 11 (*g*) of Council resolution 27/2, the coordinators of regional and political groups to share with her, through the secretariat, by Friday 14 November 2014, their suggestions and proposals for improving the effectiveness and efficiency of the Working Group with a view to accomplishing its mandate. Responses were received from the Group of Western European and Other States and the European Union, and were taken into consideration when drafting the present framework. The draft framework will be forwarded to the coordinators of the regional and political groups with a view to seeking their comments, then will be submitted for consideration by the Working Group at its sixteenth session, together with any comments received.

3. In its resolution 1998/72, endorsed by the Economic and Social Council in its decision 1998/269, the Commission on Human Rights decided, in view of the urgent need to make further progress towards the realization of the right to development as elaborated in the Declaration on the Right to Development, to recommend that the Council establish an open-ended working group as a follow-up mechanism, with a mandate:

(a) To monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration;

(b) To review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development;

(c) To present for the consideration of the Commission a sessional report on its deliberations, including advice to the Office of the United Nations High Commissioner for Human Rights (OHCHR) with regard to the implementation of the right to development, and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development.

4. The draft framework also takes into account the tasks entrusted to the Working Group by the Human Rights Council in subsequent resolutions, including in its most recent, resolution 27/2.

5. Drafting a framework for improving the effectiveness and efficiency of the Working Group will considerably benefit from an assessment of its past work to determine the factors and conditions that may have enhanced or impaired its ability to perform the tasks entrusted to it. Such an approach will also help ascertain the extent to which the Working Group has been able to address all aspects of its mandate with a view to its accomplishment.

6. The first part of the present report contains a short review of the past work of the Working Group, drawing on its agreed conclusions and recommendations, assessing the factors and conditions that may have contributed to, or hampered, its effectiveness and efficiency. The second part draws on lessons learned and formulates a draft framework (see

annex) for improving the effectiveness and efficiency of the Working Group, with a view to accomplishing its mandate.

II. Past processes of the Working Group: their effectiveness and efficiency

7. The past processes of the Working Group can be divided into three periods. The first period, which began in September 2000 and ended in 2004, was characterized by interaction with the independent expert on the right to development, a follow-up mechanism simultaneously established by the Commission on Human Rights with a mandate to present to the Working Group at each of its sessions a study on the current state of progress in the implementation of the right to development, taking into account, inter alia, the deliberations and suggestions of the Working Group.

8. The second period, from 2005 to 2010, was influenced by its interaction with the high-level task force on the implementation of the right to development, which was established within the framework of the Working Group to help it to fulfil its mandate, as contained in subparagraph 10 (*a*) of Commission on Human Rights resolution 1998/72, with the strengthening of the global partnership for development as its guiding principle.

9. The third period, which began in 2011 and continues to date, is an intergovernmental process that has focused on the consideration, revision and refinement of the criteria and corresponding operational sub-criteria for the implementation of the right to development that were developed by the task force, with a view to their endorsement and use for the purposes outlined by the Human Rights Council in its resolution 4/4, and in subsequent resolutions of the Council, including its most recent, resolution 27/2.

A. 2000 – 2004

10. During the period 2000 – 2004, the Working Group conducted its work in five annual sessions, totalling 41 working days.

11. During this initial 5-year period, the work of the Working Group was largely influenced by its interaction with the independent expert on the right to development and his proposal for an international compact for the implementation of the right to development, built upon reciprocity or the mutual implementation of obligations, linking in a common agreement the developing States concerned and the representatives of the international community, donor States or international financial institutions. The proposal envisaged State-owned development programmes financed by donor States through a callable fund, to be managed by a support group made up of relevant international organizations, led by the Development Assistance Committee of the Organization for Economic Cooperation and Development, with a remedial mechanism and monitoring systems at both the national and international levels to guide the process. As a first step, an expert working group was to be convened, and a follow-up mechanism to the Working Group would ensure that all intergovernmental organizations acted consistently in implementing their programmes and the right to development.

12. A considerable amount of the Working Group's time, and its entire fourth session, was spent in examining the proposal, which focused on development assistance for national action through international cooperation relating to article 4 of the Declaration on the Right to Development.

13. During this period, the absence of an effective agenda providing a focus for the meeting and ensuring that all information was covered, was an important factor that

undermined the effectiveness and efficiency of the Working Group. Although the agenda for its first, second, third and fourth sessions are no longer available, an examination of the structure of the reports on those sessions reveals that the specific tasks entrusted to the Working Group by the Commission on Human Rights under its resolution 1998/72, subparagraph 10 (a) (i) and (ii), were not addressed, nor were the actions required of it. The agenda of its fifth session contained an item entitled "Review of progress and obstacles in the promotion, implementation, operationalization and enjoyment of the right to development", with sub-items focusing on activities relating only to global partnerships for development (E/CN.4/2004/23, annex).

14. Lacking an effective agenda to guide its deliberations, crucial questions relating to essential first steps remained unanswered, or were barely dealt with, such as (a) how best to monitor and review progress made in the promotion and implementation of the right to development, at the national and international levels, so that the Working Group may make recommendations thereon and further analyse obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; (b) the competence of the Working Group to make recommendations to other actors; and (c) how best to ensure the submission of reports and information and, once submitted, the methodology to be adopted for their review. Although consideration of the report of OHCHR was on the agenda for three of its five sessions, the action required by the Group, in accordance with Commission on Human Rights resolution 1998/72, subparagraph 10 (a) (iii), was not reflected on the agenda. Consequently, throughout this period, the Office was not provided with any advice with regard to the implementation of the right to development.

15. The lack of a requirement for submission of reports and information to the Working Group by those identified by the Commission on Human Rights in subparagraph 10 (a) (ii) of its resolution 1998/72 further undermined the effectiveness and the inefficiency of the Working Group. At its third session, held in 2002, the Working Group regretted the fact that United Nations funds and agencies and other international organizations involved in major international conferences of direct relevance to the Working Group had not provided information on developments in their sphere of activities with implications for the implementation of the right to development. The lack of engagement of other important international organizations, relevant United Nations agencies, funds and programmes, despite the formal invitation made to them by both the Chairperson-Rapporteur and OHCHR, was also a source of concern to the Working Group.

16. The effectiveness and efficiency of the Working Group were also affected by an absence of consensus at three (the first, second and fourth) of the five sessions held during this period, despite the fact that the Working Group resumed its work in an informal session for two extra days. The delegations requesting a postponement suggested that insufficient time was the main reason for failure to reach a consensus. One delegation stated that there had been insufficient time to consider the text during the formal session. Another explained that the group of States concerned considered that the Working Group should not be rushed if quality and practicality of the outcome was to be ensured. At its fourth session, the Chairperson-Rapporteur observed that the Working Group had not been in a position to conclude consultations on its conclusions and recommendations within the time allotted to its formal session.

17. Owing to its lack of an effective agenda, appropriate mechanisms, a methodology and sufficient time, and without the political will to equip itself with the means commensurate with the tasks entrusted to it, the Working Group saw its effectiveness and efficiency considerably undermined during this period.

18. The Working Group therefore focused attention on those aspects of its mandate where it could be most effective and efficient. Largely influenced by its interaction with the independent expert and his proposal for a development compact, the Working Group

agreed, as a way forward, to focus specifically on mainstreaming and international development partnerships, which related, in particular, to article 4 of the Declaration on the Right to Development. This agreement was reached at its third and fifth sessions, the only sessions at which the Working Group adopted its conclusions and recommendations by consensus. At its third session, one delegation had a problem in joining consensus on one paragraph, and was therefore permitted to consult its capital. Another delegation, in its comments submitted, stated that it had fundamental differences with the conclusions reached and recommendations made in the text and therefore had to dissociate itself. It considered that there was still no consensus on the precise meaning of the right to development.

19. The fifth session of the Working Group was preceded by a high-level seminar on the right to development entitled "Global partnership for development", organized by OHCHR pursuant to Commission on Human Rights resolution 2003/83, to review and identify effective strategies for mainstreaming the right to development in the policies and operational activities of the major international organizations and institutions. Meeting soon afterwards, the Working Group, building upon the consensus reached at its third session and having due regard to the positive outcome of the high-level seminar, agreed on the importance of establishing, within the framework of the Working Group, partnerships for the implementation of the right to development between the Commission and United Nations agencies, funds and programmes, multilateral financial and development institutions and the World Trade Organization, viewing as its priority the development of proposals based on the conclusions agreed at its third and fifth sessions. It also agreed that the Working Group and its follow-up activities would focus on mainstreaming the right to development in the operational activities, policies and programmes of relevant development agencies and international financial and trade institutions at the national and international levels.

20. In the light of the foregoing, the Working Group recommended the establishment of a high-level task force on the implementation of the right to development, within the framework of the Working Group, to assist in fulfilling its mandate as described by the Commission on Human Rights in subparagraph 10 (*a*) of its resolution 1998/72. Its focus and guiding principle would be strengthening global partnerships for development. For its first report, the task force would consider issues reflecting both national and international perspectives, inter alia, obstacles and challenges to implementation of the Millennium Development Goals in relation to the right to development; social impact assessments in the areas of trade and development at the national and international levels; and best practices in the implementation of the right to development.

21. The Chairperson-Rapporteur of the Working Group explained that the proposal was the result of a recognition that, although the Working Group, in its current form, could not operationalize or implement the right to development, it could serve to bring together all the relevant actors involved in the implementation of the right to development and assist them by sending a common message. Such a forum would allow the introduction of expertise into the Working Group in the form of an institutionalized group of experts and representatives of relevant agencies that would have a more direct role in the implementation of the right to development, and also assist in setting up a regular dialogue with United Nations agencies and programmes, regional development institutions and international financial institutions that would facilitate a periodic assessment and review of specific country experiences and identify gaps in the existing development partnerships.

22. Despite the factors affecting its effectiveness and efficiency during this period, the Working Group was able to agree on a certain number of issues relating to other aspects of its mandate, without being able, however, to pursue their consideration further.

23. In this respect, at its fifth session, the Working Group reiterated the commitments reflected in article 3, paragraphs 1 and 3 of the Declaration on the Right to Development, and agreed on, inter alia, the need for an integrated approach to the implementation of national and international dimensions of the right to development; the need to identify and implement complementary measures at the national and international levels in order for the globalization process to facilitate the realization of the right to development; and the need for appropriate measures to enable developing States to participate effectively in and benefit from an open, equitable, rules-based, predictable and non-discriminatory multilateral trading system that would contribute to the implementation of the right to development (see E/CN.4/2004/23).

24. An assessment of the impact of a certain number of international economic, trade and financial issues on the realization of the right to development and of the need to fill organizational gaps could be key aspects of its future work programme.

25. With regard to its competence to address international economic, trade and financial issues, the Working Group considered that, taking into account the consensus reached at the World Conference on Human Rights in Vienna and the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, it was competent to send out a strong message in all areas where the existing system has an adverse impact on the realization of the right to development for all, while underlining that it could not and did not see itself as a substitute for multilateral negotiations.

26. With regard to a permanent follow-mechanism for the implementation of the right to development, the Working Group, at its third session, recognized the existence of divergent views and agreed to discuss further the various proposals on the understanding that all options, including those proposed at its third session and as contained in the Declaration on the Right to Development, remained open to further discussion at future sessions.

B. 2005 – 2010

27. During the second period, the Working Group, assisted by the task force, developed and refined criteria and corresponding operational sub-criteria, gradually expanding their utility as a tool for the periodic evaluation of global partnerships for development to their use for the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, thus expanding its attention to other aspects of its mandate.

28. At all six sessions, the Working Group adopted its conclusions and recommendations by consensus. At its sixth session, four delegations expressed positions that were not intended to block consensus: one delegation reserved its position on trade and debt relief, but joined consensus, while the other three delegations dissociated themselves from the consensus. At its eighth, ninth and tenth sessions, held in February and March 2007, August 2008 and June 2009 respectively, two political groups and four delegations speaking in their national capacity explained their position on the conclusions and recommendations.

29. In comparison to the first period, the second was more focused, albeit only on certain elements of its legislative mandate, with the Working Group less ambitious with regard to its objectives, possibly with a view to maintaining the consensus reached at the end of the first period.

30. During the second period, the agenda of the Working Group continued to reflect only partially the tasks entrusted to it by the Commission on Human Rights in subparagraph 10 (*a*) of its resolution 1998/72, resulting in progress in some areas but delays in others. At

the sixth session, a new agenda item entitled "Review of progress in the promotion and implementation of the right to development" replaced the one adopted at the fifth session, with a sub-item to consider the report of the high-level task force, another to consider the report of the High Commissioner, and a third to consider the way forward, which was replaced at the eighth session with a sub-item on consideration of next steps. At the ninth session, the sub-item on the report of the high-level task force was merged with the main agenda item, and the remaining sub-items removed altogether. The attention of the Working Group was thus focused entirely on the task force.

31. As in the preceding period, the agenda did not reflect the mandate described in subparagraph 10 (*a*) (i) of Commission resolution 1998/72. The review of progress made was restricted to the work of the task force and to OHCHR. Despite the existence of a relevant sub-item on the agenda of its sixth, seventh and eighth sessions to consider the report of the High Commissioner, it was only at the sixth session that the Working Group addressed recommendations to the Office, in accordance with subparagraph 10 (*a*) (iii) of its mandate. The task entrusted to the Working Group under subparagraph 10 (a) (ii) remained absent.

32. At its sixth session, however, the Working Group decided to allocate time at its future sessions to periodically review its recommendations and, in the light of topical issues, to undertake a review of its future agenda.

33. During the second period, the Working Group was effective and efficient in developing and refining criteria and corresponding operational sub-criteria for the evaluation of development partnerships, but lagged when addressing other aspects of its mandate. Despite its mandate to monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, at the national and international levels, and despite the agreement reached at its fifth session on the need to adopt an integrated approach to the implementation of national and international dimensions of the right to development in the current phase of globalization, it was only at its eighth session – six and a half years after its first session – that the Working Group expanded the scope of the criteria from a focus on the commitment in article 4 of the Declaration to other dimensions.

34. At its seventh session, the Working Group recognized that genuine partnerships were important for the implementation of article 4, paragraph 1 of the Declaration. At its sixth and seventh sessions, the Working Group welcomed, however, the growing acceptance of the simultaneous levels of action required at the national and international levels, and agreed that, while the importance of the responsibility of States to implement the right to development could not be overemphasized, this in no way reduced the importance of international cooperation in providing an enabling environment at the international level. At its seventh session, the Working Group recognized the gaps and cases of incoherence arising between the implementation of the right to development and the practices adopted in development partnerships, and agreed that enhancing the effectiveness of global partnerships with regard to the realization of the right to development would require the identification of all the dimensions of the right, to guide and complement such partnerships.

35. At the eighth session, the focus of the Working Group evolved from a focus on evaluating compliance with the provisional criteria to improving the criteria on the basis of lessons learned from their practical application, moving beyond Millennium Development Goal 8 to the implementation of the right to development. The Working Group agreed that the ongoing work of the task force constitutes a process of progressively identifying and refining right-to-development standards; that the experience gained from further work of the task force in applying, refining and developing the criteria would be conducive to the elaboration and implementation of a comprehensive and coherent set of standards; and that

the said standards could take various forms, including guidelines on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement (A/HRC/4/47, para. 52)

36. After the adoption of the conclusions and recommendations of the Working Group, two political groups and two delegations, speaking in their national capacity, clarified their stance with regard to the reference made to an "international legal standard of a binding nature" (Ibid., annex III). One political group interpreted it to mean an "internationally legally binding convention", while another political group and two delegations, speaking in their national capacity, stated that the reference did not mean that the task force or the Working Group was mandated to work on a legally binding instrument, but was merely suggesting that such an option might be considered at a future date. They emphasized that the development of criteria to promote and support the practical implementation and operationalization of the right to development was ongoing.

37. Human Rights Council resolution 4/4, adopted by consensus by the Council, marked a new stage in the implementation of the Group's mandate. In resolution 4/4, subparagraph 2 (*c*) and (*d*), the Council decided that the criteria, as endorsed by the Working Group, should be used, as appropriate, in the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, and that upon completion of the phases outlined, the Working Group would take appropriate steps for ensuring respect for and practical application of these standards, which could take various forms, including guidelines on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement. The representative of a political group, when explaining the group's vote after the vote, stated that the group would welcome the elaboration of guidelines but not necessarily with the implication that they would lead to a legal international instrument of a binding nature. One delegation, speaking in its national capacity, added that it was not appropriate for the Working Group and the task force to consider the elaboration of a binding document and that it took subparagraph 2 (*d*) of the resolution to mean that a binding norm was only one option to be considered among many others.

38. In subsequent resolutions, the Human Rights Council and the General Assembly reiterated the purposes for which the criteria would be used, once endorsed by the Working Group, as well as the phases to be respected.

39. At its ninth session, the Working Group requested the task force to give priority to improving the criteria in the light of the lessons learned from their application and taking into account the Declaration on the Right to Development and other relevant international instruments, as well as the views expressed by States at its ninth session, with a view to submitting a revised list of criteria that served the purposes set out in all relevant provisions of Council resolution 4/4. After the adoption of the conclusions and recommendations by the Working Group, the representative of a political group clarified that the term "relevant provisions" referred to were those leading to an "internationally legally binding convention". One delegation, speaking in its national capacity, stated that "other instruments" included the African Charter on Human and Peoples' Rights. Another delegation, also speaking in its national capacity, explained that it interpreted Council resolution 4/4 as in no way predetermining that the outcome of the efforts made by the Working Group would be an international instrument on the right to development.

40. At its tenth session, the Working Group agreed that the scope of the criteria should go beyond Millennium Development Goal 8 and aim at the implementation of the right to development, taking into account the evolving priorities of the international community. In its resolution 12/23, the Human Rights Council endorsed the recommendation of the

Working Group (see A/HRC/12/28) that the revised criteria and sub-criteria should address the essential features of the right to development, as defined in the Declaration on the Right to Development, in a comprehensive and coherent way, including priority concerns of the international community beyond those enumerated in Millennium Development Goal 8.

41. At its eleventh session, the Working Group considered that further work should be undertaken at the intergovernmental level to adequately reflect both the national and international dimensions. It also considered that additional time was necessary, at this stage, for consideration and pronouncements by Governments on the substance of the work of the task force, and on the way forward, using as reference the Declaration on the Right to Development as well as Human Rights Council and General Assembly resolutions on the right to development (A/HRC/15/23, paras. 43-44).

42. During the 6-year period from 2005 to 2010, the Working Group only marginally addressed issues relating to other aspects of its mandate.

43. With regard to its competence to make recommendations relating to the activities of other international organizations, the Working Group, at its sixth session, agreed that its role, as a part of its mandate as a follow-up mechanism to contribute to making further progress towards the realization of the right to development, was to draw the attention of the said organizations to the importance of including a right to development perspective. In this regard, it addressed recommendations to international financial institutions, donor countries and States in general on issues relating also to article 3 of the Declaration.

44. At its seventh session, the Working Group recognized that Millennium Development Goal 8 implied a significant international role not only for developed and developing States but also for other relevant global entities, notably international financial institutions, business corporations, the media and networks of non-governmental organizations. Similarly, relevant international human rights institutions, such as the human rights treaty bodies, the special procedures of the Commission on Human Rights and the United Nations High Commissioner for Human Rights, also had a responsibility, within their respective mandates, to work with Governments and their international trade, finance and development partners to ensure coherence between their undertakings in those areas and States' human rights obligations in general, particularly with regard to the right to development (E/CN.4/2006/26, para. 43).

45. With regard to monitoring, at its sixth session, the Working Group recommended that the Commission on Human Rights that it consider the possibility of pursuing some of its recommendations through other existing mechanisms of the Commission, including the Subcommission on the Promotion and Protection of Human Rights and special procedures, as appropriate (E/CN.4/2005/25, para. 54 (g)). At its seventh session, the Working Group, in addition to its recommendations on specific actions to be taken by development practitioners and other relevant entities already engaged in periodic monitoring of progress on the Millennium Development Goals, also addressed recommendations to other actors with responsibility for monitoring aspects of global partnerships relevant for advancing the right to development, including parliaments, national institutions and civil society, States, entities monitoring the activities, United Nations agencies, funds and programmes, and international financial institutions (E/CN.4/2006/26, paras. 69-75).

46. During this period, the work of the Working Group in developing and refining criteria and corresponding operational criteria through their practical pilot application was facilitated by the relatively important means with which it had equipped itself, which also facilitated consensus-building and allowed it to move forward, albeit only on certain aspects of its mandate. From 2005 to 2010, the Working Group had at its disposal a total 72 working days, including 36 days of its meeting time allocated to the high-level task force and 4 days allocated in 2009 to two expert meetings organized by OHCHR, in cooperation

with the Measurement and Human Rights Program of the Carr Center for Human Rights Policy at the Harvard Kennedy School of Government and the Program on Human Rights in Development at the Harvard School of Public Health. During this period, the task force also undertook technical missions for follow-up assessment of development partnerships, including eight field missions (five days for three persons to Addis Ababa, seven days for five persons to Brussels, four days for six persons to Paris and 10 days for five persons to Geneva). The Working Group also benefited from the assistance of seven consultants.

C. 2011

47. In 2011, the Working Group embarked on an intergovernmental process of considering and revising the criteria and corresponding operational sub-criteria for the implementation of the right to development with a view to endorsing them for their use, as appropriate, in the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, in accordance with Human Rights Council resolution 15/25. In subparagraph 3 (*h*) of its resolution, the Council reiterated that the Working Group should take appropriate steps to ensure respect for and practical application of these standards, which could take various forms, including guidelines on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature through a collaborative process of engagement.

48. During this period, the Working Group conducted its work in four annual sessions of five days each, totalling 20 working days, and also met in two informal intersessional meetings of two days each to consider ways of improving the effectiveness of its forthcoming sessions.

49. The agenda at its twelfth, thirteenth, fourteenth and fifteenth sessions continued to only partially reflect its mandate. The substantive agenda item of its twelfth session was "Review of progress in the implementation of the right to development"; for the thirteenth, fourteenth and fifteenth sessions, the agenda item was redefined to focus on the consideration, revision and refinement of the right to development criteria and operational sub-criteria (see A/HRC/15/WG.2/TF/2/Add.2).

50. At its twelfth session, the Working Group engaged in a general discussion on the consolidated findings of the task force, the revised list of draft criteria and corresponding operational sub-criteria, and suggestions by the task force for further work, including aspects of international cooperation not covered until then. It also considered the comments and views on the work of the task force submitted by Governments, groups of Governments and other stakeholders, and the methodology to be adopted for consideration, revision and refinement of the draft criteria and operational sub-criteria, including a possible structure (see A/HRC/19/52 and Corr.1). The Working Group launched the process of considering, revising and refining the draft criteria and corresponding operational sub-criteria at its thirteenth session (see A/HRC/21/19) and completed its first reading at its fifteenth (see A/HRC/27/45). At that session, it recommended, inter alia, continuing to accomplish its mandate including, in particular, to consider, revise and refine the draft right to development criteria and corresponding operational sub-criteria.

51. The conclusions and recommendations adopted by consensus by the Working Group at all four sessions retained a strictly technical character, focusing on documentation and the need for expert contributions acknowledging the importance of engaging further the relevant United Nations agencies, funds and programmes and institutions, as well as other multilateral institutions and forums, and international organizations and other relevant stakeholders. The Working Group regularly requested OHCHR to make available documentation, invited the High Commissioner and requested the Chairperson to further

their efforts in respect of encouraging active participation of relevant stakeholders, and invited the Chairperson to hold informal consultations with Governments, groups of Governments, regional groups and relevant stakeholders to prepare the forthcoming sessions.

52. At the twelfth session, after the adoption of the conclusions and recommendations, representatives of two political groups and one regional group expressed their views. The representative of one political group regretted that the Group had been unable to agree on language that would have referred to its mandate and the Declaration on the Right to Development as a basis for assessing the right to development criteria and operational sub-criteria. The representative expressed the group's commitment to move the process forward, and underlined the importance of mutual responsibility and accountability in a time of multiple crises. The representative also recalled that the right to development criteria and operational sub-criteria, once revised and endorsed, should be used in the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, as a basis for a legally binding instrument, in accordance with the road map adopted by the Human Rights Council in its resolution 4/4 and subsequent resolutions, most recently resolution 18/26. The group supported a call for the full integration of the multidimensional aspects of the right to development as elaborated in the Declaration on the Right to Development into all areas of the work of the United Nations system and international financial and trade institutions, as well as in its major processes such as the follow-up to the Fourth United Nations Conference on the Least Developed Countries, the Thirteenth Ministerial Meeting of the United Nations Conference on Trade and Development, the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil in June 2012, the quadrennial comprehensive policy review and the United Nations development agenda beyond 2015. The representative of one regional group considered that the conclusions and recommendations were weak, and hoped that they would nevertheless help to move the process on the criteria and operational sub-criteria forward, with as its ultimate outcome the implementation of the right to development. The representative of another political group stated that it was important that the process of refining and revising the right to development criteria and sub-criteria continue to take into consideration all relevant documents, and not be limited to the Declaration on the Right to Development.

53. With a view to improving the effectiveness of the Working Group, the Human Rights Council decided, in its resolutions 21/32, 24/4 and 27/2, to convene two-day informal intersessional intergovernmental meetings of the Working Group with the participation of States, groups of States and relevant United Nations agencies, funds and programmes and institutions, as well as other multilateral institutions and forums. In resolution 27/2, the Council also decided that the Chairperson-Rapporteur should further her efforts to improve the Group's effectiveness and efficiency with a view to accomplishing its mandate, including through drafting a framework for consideration at the sixteenth session of the Working Group, in consultation with regional and political groups.

54. As an additional support to accelerating progress in the implementation of the right to development and its realization, the Human Rights Council, in its resolutions 21/32, 24/4 and 27/2, also decided to consider the extension of the meeting time of the Working Group, as appropriate.

III. Conclusions and recommendations

A. Conclusions

55. **In the almost 15 years of its existence, the Working Group has benefited from a wealth of expertise, experience and knowledge through intensive exchange and dialogue with a broad range of actors, including Governments, United Nations agencies, funds and programmes and other relevant international organizations, regional development institutions, non-governmental organizations, and academics, as well as other entities directly involved in monitoring activities.**

56. **The practical approach adopted by the Working Group during the second period, focusing on certain aspects of its mandate, together with the relatively important means allocated for achieving the objective it had set for itself, enabled the Working Group to be more effective and efficient in progressively developing, refining and revising the criteria and corresponding operational sub-criteria for the implementation of the right to development.**

57. **The Working Group has entered a new phase in the implementation of its mandate. To improve its effectiveness and efficiency with a view to accomplishing its mandate, the Working Group has at its disposal the results of almost 15 years of work, reflecting a common capital, including its lessons learned; agreed language, in particular the conclusions and recommendations adopted by consensus at its third and fifth to eleventh sessions, and endorsed by the Human Rights Council; a set of draft criteria and corresponding operational sub-criteria for the implementation of the right to development; consensus on the steps to be taken to follow up on the set of standards for the implementation of the right to development once endorsed by the Working Group; the issues agreed upon as requiring further consideration; and the resolutions on the right to development adopted by the Human Rights Council and the General Assembly.**

58. **The issues on which there is agreement and may therefore serve as a solid basis upon which the Working Group can build to improve its future effectiveness and efficiency include:**

(a) A set of standards for the implementation of the right to development. The consensus reached at the eighth session of the Working Group set the basis for Human Rights Council resolution 4/4, adopted by consensus, and subsequent resolutions, by which the Council endorsed the road map proposed by the Working Group, and decided that, once endorsed by the Working Group, the criteria should be used, as appropriate, in the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, and that the Working Group should take appropriate steps to ensure respect for and practical application of these standards. In the view of the Council, the standards could take various forms, including guidelines on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement.

(b) An integrated, comprehensive, coherent and dynamic approach. At its fifth session, the Working Group reiterated the commitments reflected in article 3, paragraphs 1 and 3 of the Declaration on the Right to Development, and agreed on, inter alia, the need for an integrated approach to the implementation of national and international dimensions of the right to development, the need to identify and implement complementary measures at the national and the international levels for the globalization process to facilitate the realization of the right to development, and

the need for appropriate measures to enable developing countries to effectively participate in and benefit from an open, equitable, rules-based, predictable and non-discriminatory multilateral trading system that would contribute to the implementation of the right to development. At its eighth session, the Working Group agreed that the experience gained from further work of the task force would be conducive to the elaboration and implementation of a comprehensive and coherent set of standards. At its tenth session, the Working Group agreed that the scope of the criteria should go beyond Millennium Development Goal 8 and aim at the implementation of the right to development, taking into account the evolving priorities of the international community. In its resolution 12/23, the Human Rights Council endorsed the recommendation of the Working Group that the revised criteria and sub-criteria should address the essential features of the right to development, as defined in the Declaration on the Right to Development, in a comprehensive and coherent way, including priority concerns of the international community beyond those enumerated in Millennium Development Goal 8. At its eleventh session, the Working Group considered that further work was necessary at the intergovernmental level to reflect adequately both the national and international dimensions of the right to development, and that the pronouncements by Governments on the substance of the work of the task force, and on the way forward, use as reference the Declaration on the Right to Development and the resolutions on the right to development adopted by the Human Rights Council and the General Assembly.

(c) Competence. With regard to international economic, trade and financial issues, the Working Group considered, at its third session, that, taking into account the consensus achieved at the World Conference on Human Rights in Vienna and the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, it was competent to send out a strong message in all areas where the existing system has an adverse impact on the realization of the right to development for all, while underlining that it could not and did not see itself as a substitute for multilateral negotiations. With regard to its competence to make recommendations relating to the activities of other international organizations, the Working Group agreed, at its sixth session, that its role, as part of its mandate as a follow-up mechanism to contribute to making further progress towards the realization of the right to development, was to draw their attention to the importance of including a right-to-development perspective.

(d) Actors. At its seventh session, the Working Group recognized that Millennium Development Goal 8 implied a significant international role not only for developed and developing States but also for other relevant global entities, notably international financial institutions, business corporations, the media and networks of non-governmental organizations. Similarly, relevant international human rights institutions, such as the human rights treaty bodies, the special procedures of the Commission on Human Rights and the United Nations High Commissioner for Human Rights, had a responsibility, within their respective mandates, to work with Governments and their international trade, finance and development partners to ensure coherence between their undertakings in those areas and States' human rights obligations in general, particularly with regard to the right to development.

(e) Permanent follow-up mechanism for the implementation of the right to development. The Working Group, at its fifth session, recognized the existence of divergent views and agreed to discuss further the various proposals on the understanding that all options, including those proposed at its third session and as contained in the Declaration on the Right to Development, remained open to further discussion at future sessions.

(f) Review of future agenda. At its sixth session, the Working Group decided to allocate time at its future sessions to periodically review its recommendations and, in the light of topical issues, to undertake a review of its future agenda.

59. **While it is important to underline the positive results achieved by the Working Group, it is also essential to remain lucid at all times and to neither overestimate nor underestimate the gains made and the obstacles encountered, which continue to hamper the effectiveness and efficiency of the Working Group in accomplishing its mandate in accordance with subparagraph 10 (*a*) of Commission on Human Rights resolution 1998/72.**

60. **The Working Group has been able to embark on the long and complex process of developing a set of standards for the implementation of the right to development, but it has lagged behind in other aspects of its mandate. In addition to the endorsement of the criteria and corresponding operational sub-criteria, a certain number of tasks entrusted to it by the Commission on Human Rights in subparagraph 10 (*a*) of its resolution 1998/72 remain to be addressed.**

61. **Despite a mandate to monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, at the national and international levels, and despite the agreement on the need to adopt an integrated approach to the implementation of national and international dimensions of the right to development, it was only at its eighth session that the Working Group was able to expand the scope of the criteria from a focus on article 4 of the Declaration to other dimensions of the right to development.**

62. **The above review of past processes reveals some of the factors that have influenced the effectiveness and efficiency of the Working Group, which are, principally:**

(a) Political will and commitment on the part of all Member States to collectively move forward through constructive dialogue and the search for consensus at ever higher levels, to implement the mandate conferred by the Commission on Human Rights in subparagraph 10 (*a*) of its resolution 1998/72, in keeping with the demands of the current global situation and the evolving priorities of the international community. During the first period, the Working Group reached consensus at only two of its five sessions, and on both occasions, by restricting itself to certain aspects of its mandate, focusing on mainstreaming and international development partnerships, of particular relevance to article 4 of the Declaration. The Chairperson of the Working Group explained that the proposal to establish a high-level task force was the result of the recognition that the Working Group, in its current form, could not operationalize or implement the right to development, but could serve to bring together all the relevant actors involved in the implementation of the right to development and assist them by sending a common message. Such a forum would introduce expertise into the Working Group in the form of an institutionalized group of experts and representatives of relevant agencies that would have a more direct role in the implementation of the right to development, and also help set up a regular dialogue with United Nations agencies and programmes, regional development institutions and international financial institutions that would facilitate a periodic assessment and review of specific country experiences and identify gaps in the existing development partnerships. During the next six years of its work, the Working Group was able to maintain the consensus reached by continuing to limit itself to certain aspects of its mandate. While the Working Group was effective and efficient in developing and refining criteria and corresponding operational sub-criteria, it lagged

in its effectiveness and efficiency in addressing other aspects of its mandate. The adoption of its conclusions and recommendations by consensus has continued over the past four years of its work, albeit on technical matters rather than on substance.

(b) An effective agenda that ensures all aspects of the mandate of the Working Group are properly addressed, including the action required, bearing in mind the need for balance, including through the adoption of a realistic time frame for each aspect, taking into account their degree of complexity. Throughout the existence of the Working Group, its agenda has not reflected the tasks entrusted to it by the Commission on Human Rights in subparagraph 10 (*a*) of its resolution 1998/72, nor has the action required. Lacking an effective agenda to guide its deliberations, the Working Group has not been able to effectively and efficiently address all aspects of its mandate, including, in particular, the ways and means to carry out the tasks entrusted to it. The Working Group only once, at its sixth session, addressed recommendations to OHCHR, in accordance with subparagraph 10 (a) (iii) of resolution 1998/72. Although consideration of the report of OHCHR was on the agenda at its first, third, fifth, sixth, seventh and eighth sessions, the Working Group did not indicate the action required. Since its ninth session, the matter is no longer included in its agenda.

(c) The availability of means commensurate with the tasks entrusted to it and the mission to be accomplished, including mechanisms, modalities and time, as well as human and material resources. The Working Group has been most effective and efficient when it has equipped itself with the means necessary to accomplish its objectives. During the second period, the means made available to the task force, including time and material resources, contributed considerably to an improvement in its effectiveness and efficiency, while the failure to maintain a balance in their allocation slowed the implementation of other aspects of the Working Group's mandate. During this period, the Working Group benefited from an average of 12 working days annually, in addition to 26 days allocated to field missions for 15 experts to Addis Ababa, Paris, Brussels and Geneva, and resources allocated for the services of seven consultants. By contrast, during the current consensus-building process, the Working Group had only five annual working days at its disposal. Without the appropriate means to monitor or review progress made in the promotion and implementation of the right to development and to obtain and review reports and other information from States, United Nations agencies, other relevant international and non-governmental organizations, the Working Group has not been able to implement the tasks entrusted to it by the Commission on Human Rights in subparagraph 10 (a) (i) and (ii) of its resolution. With regard to subparagraph 10 (a) (ii), the Working Group has consistently expressed concern at the low level of participation of United Nations agencies, funds and programmes and other international organizations, and has sought to engage them further through its Chairperson and OHCHR. The following crucial issues will need to be addressed to improve the effectiveness and efficiency of the Working Group with a view to accomplishing its mandate:

(i) How best to monitor and review progress made in the promotion and implementation of the right to development, in accordance with subparagraph 10 (a) (i) of Commission on Human Rights resolution 1998/72;

(ii) How best to ensure submission of reports and information by States, United Nations agencies, other relevant international and non-governmental organizations, and, once submitted, the methodology to be

adopted for their review, in accordance with subparagraph 10 (a) (ii) of resolution 1998/72;

(iii) The competence of the Working Group to make recommendations to other actors, and to require submissions of reports and information, in accordance with subparagraph 10 (a) (i) and (ii) of resolution 1998/72.

63. The importance of time has been demonstrated ever since the establishment of the Working Group. At the first and second sessions, it was suggested that insufficient time was the main reason for the lack of consensus. Among those requesting additional time, there were expressions of support for continuing negotiations until consensus was achieved and the view that further time would have been needed for this purpose. At the fourth session, where consensus was once again not reached, the Chairperson observed that the Working Group had not been in a position to conclude the consultations on its conclusions and recommendations within the time allotted to its formal session. It is noteworthy that, during the first period, the Working Group met for eight working days, annually.

64. The Human Rights Council has considered the extension of the meeting time of sufficient importance that it has reiterated its decision to consider the matter at three consecutive sessions, in its resolutions 21/32, 24/4 and 27/2.

B. Recommendations

65. In accordance with subparagraph 11 (*g*) of Human Rights Council resolution 27/2, the recommendations contained in the draft framework are aimed at improving the effectiveness and efficiency of the Working Group with a view to accomplishing all aspects of its mandate, in accordance with subparagraph 10 (a) (i) (ii) and (iii) of Commission on Human Rights resolution 1998/92. The Chairperson-Rapporteur has also taken into consideration Human Rights Council resolution 27/2, including, in particular, subparagraph 11 (*e*) on the task assigned to the Working Group for its sixteenth session.

66. Bearing in mind the above mandate and the specific tasks entrusted to the Working Group, the recommendations will seek to address the factors and conditions that have contributed to reducing the effectiveness and efficiency of the Working Group, building upon, to the extent possible, past agreements of the Working Group, including those highlighted in the conclusions, with a view to improving its effectiveness and efficiency in accomplishing its mandate.

67. The draft framework is based on the understanding that, whereas the Working Group has reached a new stage in the process of elaborating a set of standards for implementation of the right to development, other aspects of its mandate remain to be addressed with a view to fully accomplishing the mandate contained in Commission on Human Rights resolution 1998/72, including by considering the essential issues identified in subparagraph 62 (c) (i), (ii) and (iii) above.

Annex

Draft framework to improve the effectiveness and efficiency of the Working Group on the Right to Development with a view to accomplishing its mandate

I. General

1. The Working Group on the Right to Development should reaffirm the right to development, as established in the Declaration on the Right to Development and reaffirmed by the Commission on Human Rights, the Human Rights Council and the General Assembly in subsequent resolutions, as well as in declarations adopted at international conferences, including in particular, the Vienna Declaration and Programme of Action, adopted by consensus at the World Conference on Human Rights Vienna, which reaffirmed the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

2. It is essential that the Human Rights Council narrow differences and strive to consolidate political will to move the work of the Working Group forward to accomplish its mandate. It should take advantage of the momentum of the thirtieth anniversary of the Declaration on the Right to Development in 2016 to organize, inter alia, a number of different initiatives and move forward with the sense of urgency that the current global situation demands to obtain clear and action-oriented results.

II. Procedural framework

3. The Working Group should equip itself with the means, including tools, procedures, time and human and material resources, commensurate with the duties and responsibilities that the mandate demands with a view to facilitating consensus at ever higher levels as required by the urgency of the current global situation and the evolving priorities of the international community, through open and transparent debate, and constructive dialogue, collaboration and cooperation, thereby improving its effectiveness and efficiency and accelerating progress towards accomplishing all aspects of its mandate, in accordance with Commission on Human Rights resolution 1998/72.

4. In the above regard, the Working Group should, inter alia:

(a) Review its agenda, taking into account the need to address all aspects of its mandate, in accordance with Commission on Human Rights resolution 1998/72, and the action required, taking also into account topical issues and the evolving priorities of the international community, as agreed by the Working Group at its sixth and tenth sessions;*

(b) Consider how best to monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, including reviewing reports and any other information submitted to it and providing advice to the Office of the United Nations High Commissioner for Human Rights (OHCHR) with regard to the implementation of the right to development, in

* See Oxfam, "Wealth: having it all and wanting more", issue briefing, January 2015.

accordance with subparagraph 10 (a) (i) (ii) and (iii) of Commission on Human Rights resolution 1998/72, and ensuring further progress in the promotion and implementation of the right to development;

(c) Consider modalities by which relevant United Nations system funds, programmes and specialized agencies, relevant international and non-governmental organizations, can support and contribute further to the work of the Working Group, in accordance with subparagraph 10 (a) (ii) of Commission resolution 1998/72 and paragraph 15 of Human Rights Council resolution 27/2, including by providing feedback to the Working Group on mainstreaming the right to development in their policies and operational activities, with a view to accomplishing all aspects of its mandate, as reflected in subparagraph 10 (a) (i)(ii) and (iii) of Commission resolution 1998/72;

(d) Consider the role of the right to development in the United Nations development agenda beyond 2015, noting the concern of the Human Rights Council expressed in the preamble to its resolution 27/2 underlying the importance of strengthening a new and more equitable and sustainable national and international order and the promotion and protection of all human rights and fundamental freedoms, the repeated calls of the Secretary-General for the contribution of all relevant actors to the process of arriving at the the United Nations development agenda beyond 2015, and the relevance of the right to development for that agenda, as well as the encouragement to Member States, as reflected in paragraph 12 of resolution 27/2, to pay particular consideration to the right to development in the context of the elaboration of the United Nations development agenda beyond 2015;

(e) Consider ways and means for complementing the work of the Working Group on developing a set of standards with, on the one hand, the need to examine proposals for enhancing the modalities for monitoring and reviewing the implementation of the right to development, and ensuring further progress in the promotion and implementation of the right to development, on the other:

(f) Advise OHCHR, in accordance with subparagraph 10 (a) (iii) of Commission on Human Rights resolution 1998/72, on implementing the provision contained in paragraph 14 of Human Rights Council resolution 27/2 with regard to adopting sufficient measures to ensure balanced and visible allocation of resources and due attention to ensure visibility of the right to development by identifying and implementing tangible projects dedicated to the right to development, and to provide continuous updating to the Council in this regard; it is important that the Office draw up its plan in the implementation of this provision;

(g) Continue to accomplish its mandate at its sixteenth session in a more expeditious and forward-looking manner, including and, as the essential first step, making genuine and tangible progress in considering, revising and refining the draft criteria and corresponding operational sub-criteria for the implementation of the right to development, and to finalize its work in this regard as a matter of urgency;

(h) Consider the ground rules, working methods and modalities for debate and negotiations, including, in particular, those related to its work on standard-setting, taking into account also the report of the inter-sessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights (E/CN.4/2000/112, paras. 59-60), endorsed by the Commission in its decision 2000/109, in particular the sequences concerning the conduct of working groups and time limits for standard-setting, as well as by considering other measures, including, inter alia:

(i) The multiplication of open-ended informal consultations, including in plenary sessions;

(ii) Modalities for the active involvement of all relevant stakeholders, as appropriate, in the process;

(iii) Adoption of appropriate procedures for furthering its work on the draft criteria and operational sub-criteria;

(iv) Consider the working methods of the Working Group, taking into account the following ground rules:

a. Build upon previous agreement and, in this regard;

b. Adhere to the steps envisaged by the Human Rights Council in its resolution 4/4, adopted by consensus and reiterated in subsequent resolutions of the Council, the most recent being resolution 27/2, with regard to the task of refining and endorsing the draft criteria and operational sub-criteria for the implementation of the right to development;

c. Consider the Declaration on the Right to Development, reaffirmed by consensus at the Vienna World Conference on Human Rights and in its Declaration and Programme of Action as the basis of agreed language, in accordance with Commission on Human Rights resolution 1998/72;

d. Also consider agreed texts on the right to development adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council in their resolutions, as well as the agreed conclusions and recommendations of past sessions of the Working Group, in particular those adopted by consensus at its third and fifth to eleventh sessions.

(i) In considering a specific time frame, in accordance with the above-mentioned report of the inter-sessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights (E/CN.4/2000/112, para. 60), the Working Group should, given the complexity of the issue and to facilitate consensus-building, consider, as a matter of high priority, the extension of its meeting time, in accordance with subparagraph 11 (*h*) of Human Rights Council resolution 27/2, and provide the Council with a clear proposal in this regard.